ORA
OFFICE OF RATEPAYER ADVOCATES

Comcast's Proposed Acquisition of Time Warner Cable (TWC)

How would the merger affect competition?
If approved, the proposed merger of Comcast and TWC will result in one de facto monopoly provider for high-speed broadband in California.[1] Comcast's broadband distribution network will increase **2.5** times, from serving approximately 33.7% of Californians pre-merger to more than **84%** of Californians post-merger.[2] Of this 84%, about 78% of Californians will have no other choice but Comcast, based on the minimum broadband speed standard of 25 Mbps download and 3 Mbps upload recently established by the FCC. [3]

The presence of competitive services drops off rapidly as broadband speed increases. In most areas of California, the Joint Applicants are the sole source of broadband access at speeds that customers are demanding now and in the near future, at least 25 Mbps upload, which is the speed that the FCC has set as its new benchmark. Less than 1% of Californians will have a choice of more than two competing providers.

Without viable, robust competition, a post-merger Comcast will have dominant market power to increase pricing and have no incentive to invest in its California broadband network. If the California Public Utilities Commission (CPUC) approves the merger, it will allow Comcast to control the pipes and the flow of content to an overwhelming percentage of Californians. A post-merger Comcast will be in the position to eliminate rivals and dissuade new entrants.

Do Comcast and TWC compete with each other?
Yes, but if the merger is approved, Comcast and TWC will no longer compete with each other with regard to distribution of content over the broadband network, which Comcast will completely control post-merger. Comcast and TWC have elected not to compete on a physical infrastructure basis stating it is too expensive while also claiming there is robust broadband competition. If Comcast's and TWC's reasons for not overbuilding are accepted, this could justify the consolidation of all cable broadband providers in the U.S. into one entity.

Recommendations: The merger will disproportionately harm California because a post-merger Comcast will service over 84% of households, with little to no competition. In no other state does a post-merger Comcast have such a high market share. In the CPUC's proceeding, as the PD found, Comcast and TWC have not demonstrated that the merger is in the public interest and finds that the anti-competitive harms would result if the merger is approved. The CPUC must make an informed, transparent decision that serves the businesses and consumers of this State. The CPUC should adhere strictly to the evidentiary record and issue a decision denying the merger. Because there is a federal question involved (Section 706 of the 1996 Telecommunications Act), a party may appeal a CPUC decision on the merger directly to Federal District Court, and the Court will not give the CPUC's decision any deference.

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[1] The merger transaction also includes the transfer of an estimated 595,000 customer relationships in California, as listed in Charter's 2013 10K Annual Report. Over 40,000 households in the Los Angeles region are in census blocks where both TWC and Charter offer service based on the CA Broadband Availability Data.
[2] Comcast will serve at least 10.6 million households out of 12.6 million in the State. These numbers are based on California Broadband Availability Data which is at the census block level.
[3] http://arstechnica.com/business/2015/01/comcast-now-has-more-than-half-of-all-us-broadband-customers/

Additional Background Information

Why is competition in the broadband market important?

In the absence of regulation of broadband, states and federal regulators have relied on competition to constrain prices, improve service quality, ensure that there is reliable broadband service, and drive further innovation and investment. Chairman Wheeler of the FCC has noted, **"[t]he underpinning of broadband policy today is that competition is the most effective tool for driving innovation, investment, and consumer and economic benefits."[4]**

Why is Mobile Broadband and Fixed-Wireless Broadband not a competitor to Wireline Broadband ?

Due to its lower speed, bandwidth caps, and usage-based pricing, **mobile wireless broadband** is not a competitive alternative to or a substitute for the Joint Applicants' wired broadband services. Mobile wireless broadband also cannot fulfill the rising demand for functionalities such as: (1) the ability to do homework and to participate in remote video "virtual classrooms," (2) streaming HD video at a quality level sufficient for viewing on a large screen and, (3) running applications that require high bandwidth capacity in one or both directions.

Due to its limited availability, technological and geographical constraints, and substantially higher price, **fixed wireless broadband** is not a substitute for the Joint Applicants' broadband services. The level of "competition" that fixed wireline broadband represents is so minuscule as to have zero impact in constraining the market power of the Joint Applicants.

Will pricing for broadband services increase post-merger?

Most likely. Both Comcast and TWC have implemented a succession of price increases for their broadband services between 2009 to 2014.[5] Post-merger, with over 84% of the market in California, there will be little to no competition to constrain or reign in Comcast's prices.

Comcast's Executive Vice President David L. Cohen has publicly stated that **"We're certainly not promising that customer bills are going to go down or even increase less rapidly."[6]**

How does this merger impact access and distribution of media content?

Any content that a customer requests via the public Internet, e.g., streaming or downloading a movie from Netflix or any number of transactional requests (e.g., making a purchase from Amazon or any e-commerce site, online banking, airline reservations), social media, and peer-to-peer communications (e-mail, Skype and VoIP), must pass through Comcast's broadband pipes to end-user customers ("eyeballs"). Comcast, a vertically integrated company, operates its own content businesses, e.g. NBCUniversal. The FCC and the D.C. Circuit have found that Comcast has the incentive and ability to discriminate against other content providers.

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[4] Prepared Remarks of Chairman Wheeler, "Facts and Future of Broadband Competition," September 4, 2014 at 1. http://www.fcc.gov/document/chairman-remarks-facts-and-future-broadband-competition

[5] Exhibit 1 to ORA's Highly Confidential Brief, at 93, Tables 17 and 18.

[6] http://www.nytimes.com/2014/02/15/business/media/as-services-expand-cable-bills-keeprising.html?_r=0

Where do these companies rank on customer-satisfaction?
Based on J.D. Power and Associated 2014 **Residential Wireline Telephone** and **Internet Service Provider** Satisfaction Study (West), Comcast and TWC ranked *below* the west region average for customer satisfaction. According to the 2014 American Customer Satisfaction Index (ACSI), ***Comcast, TWC and Charter Communications received the three lowest scores of all Internet service providers included in the study. Comcast, TWC and Charter Communications also received the lowest scores among all companies across all industries included in the ACSI study*.** These low customer satisfaction levels are able to persist without challenge from rivals because the Joint Applicants face little or no competition.

Are there plans to improve customer-satisfaction, service quality and reliability?
No plans. The Joint Applicants provide little evidence to support their claim that the quality of service for voice and broadband services to California consumers will not be adversely impacted by the proposed merger, let alone improve it. Comcast stated in a data request response to ORA that it **"has not made any determination regarding the specific steps that it may take to address post-transaction quality of service issues in California."**

What are Comcast's plans for investing in upgrading and expanding its network and improving its operational support systems in California post-merger?
Comcast makes no commitment on the amount of additional investment it will make in California after the merger over and beyond what it plans to invest on its own and what TWC plans to invest on its own independent of the merger.

What would the impact be on the merger if the FCC reclassifies broadband under Title II of the 1996 Telecommunications Act and adopts strong Open Internet Rules?
Reclassification and adoption of strong Open Internet Rules by the FCC would not mitigate the merger's harm to competition in California. A post-merger Comcast would still pass census blocks with more than 84% of households in California. If the FCC reclassifies broadband under Title II, there is likelihood of a court challenge and for a possible stay. The CPUC cannot rely on net neutrality as an assumed protection should it decide to grant the merger.

What has the CPUC, the California Attorney General (AG), the FCC and the U.S. Department of Justice (DOJ) done to date?
The FCC, DOJ and other states must decide to deny or approve the merger. A CPUC administrative law judge issued a proposed decision on February 13, 2015 finding that the merger would have serious anti-competitive effects, yet approves the merger with 25 conditions. It is unclear what actions the AG is taking on the merger. The FCC has delayed its proceeding several times and litigation before the D.C. Circuit Court of Appeals concerning access by parties to programming documents provided by Comcast and TWC to the FCC may cause further delay. Comcast and TWC filed letters at the SEC extending the merger agreement to August, 2015. Thus, the FCC likely will not rule on the merger before June 2015. The DOJ is conducting an antitrust review of the merger and has issued a second request for information, indicating a more in-depth review of the proposed transaction is necessary.